

IN THE MATTER OF THE APPLICATION OF DONALD H. MCKINSTRY, ET UX FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTH SIDE OF WHITE MARSH ROAD, 3400' EAST OF CENTERLINE OF BUCKS SCHOOL HOUSE ROAD (4916 WHITE MARSH ROAD) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD  
\* OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 91-159-A

ORDER OF DISMISSAL

This case comes before this Board on appeal from the decision of the Zoning Commissioner dated December 27, 1990 denying in part and granting in part with restrictions the Petitions for Zoning Variance on property located in the Eleventh Election District of Baltimore County.

WHEREAS, the Board is in receipt of a letter of dismissal filed by Petitioner/Appellant in this matter on April 3, 1991 (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Petitioner/Appellant requests that the appeal filed by him in this matter be dismissed and withdrawn as of April 3, 1991,

IT IS HEREBY ORDERED this 5th day of April, 1991 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby DISMISSED.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William P. Haines  
William P. Haines, Chairman  
John G. Wisney  
C. William Clark

IN RE: PETITION FOR ZONING VARIANCE \* BEFORE THE  
N/S White Marsh Road, 3400' \* ZONING COMMISSIONER  
E C/L of Bucks School House Rd. \* OF BALTIMORE COUNTY  
4916 White Marsh Road \*  
11th Election District \* Case No. 91-159-A  
5th Councilmanic District \*  
Donald H. McKinstry, et ux  
Petitioners \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a zoning variance from Sections 1B01.2.C.2.a (B.V.5.a., CMDP) and 504 (V.B.5.b., CMDP) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a window and building to tract boundary setback of 10 ft. in lieu of 35 ft. and 30 ft., respectively, as more particularly described on Petitioners' Exhibit No. 1.

The Petitioner's parents, Mr. and Mrs. William McKinstry, appeared, testified and were represented by Paul J. Redmond, Esquire. Linda L. Rosier appeared as a Protestant and was represented by Michael F. Delea, Jr., Esquire. Also appearing as a Protestant was Sharon Rusinovich.

As a preliminary matter, Mr. and Mrs. William McKinstry testified that they were appearing on behalf of their deaf son and daughter in-law, pursuant to a power of attorney which was produced at the hearing.

Testimony indicated that the subject property known as 4916 White Marsh Road, consists of 1.03 acres +/-, zoned D.R.5.5 and is currently unimproved.

Mr. McKinstry testified that he has deeded the subject lot to his son and daughter in-law for the construction of a home which is approximately 54 ft. wide. Testimony indicated that the dwelling will have a garage which will be connected to the main structure by a breezeway.

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Date 12/27/90  
By M. Haines

The Petitioner testified that a building permit was applied for and received in June of 1990, but that a subsequent stop work order was issued. Testimony indicated that the subject lot is 581.86 ft. deep but only 77 ft. wide +/- at the point where the dwelling is proposed. The Petitioner testified that his son and daughter in-law would suffer an undue hardship and practical difficulty if they are required to meet the mandated setbacks of the B.C.Z.R. The Petitioner indicated that the community would suffer no detrimental hardship should the requested variances be granted.

The testimony of Michael F. Delea, Jr., attorney for Linda L. Rosier, indicated that their primary concern was that the placement of the subject dwelling on the lot would create an invasion of privacy on the existing home owners in this community and add to the substantial traffic problems experienced by this community.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

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Date 12/27/90  
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Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

In reviewing the Petition, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance was denied. Clearly, the Petitioners have attempted to maximize the use of their back yard by thrusting a hardship upon their adjoining neighbor. The testimony presented by the Petitioners were in support of a matter of a preference rather than of the necessity for the variance. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of December, 1990 that the Petition for a Zoning Variance from Section 1B01.2.C.2.a (V.B.5.a., CMDP) of the B.C.Z.R. for a window and building to tract boundary setback of 10 ft. in lieu of 35 ft., is hereby DENIED; and,

IT IS FURTHER ORDERED that a zoning variance from Section 504 (V.B.5.b., CMDP) of the (B.C.Z.R.) to permit a window and building to tract boundary setback of 30 ft. in lieu of the required 35 ft., in accordance with the Petitioners' Exhibit No.1, is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this

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Date 12/27/90  
By M. Haines

Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

J. Robert Haines  
J. Robert Haines  
Zoning Commissioner  
for Baltimore County

JRH:mmm  
cc: Peoples Counsel

IN RE: PETITION FOR ZONING VARIANCE \* BEFORE THE  
N/S White Marsh Road, 3400' \* ZONING COMMISSIONER  
E C/L of Bucks School House Rd. \* OF BALTIMORE COUNTY  
4916 White Marsh Road \*  
11th Election District \* Case No. 91-159-A  
5th Councilmanic District \*  
Donald H. McKinstry, et ux  
Petitioners \*

AMENDED ORDER

WHEREAS, an Order was issued in the above captioned case on December 27, 1990 granting in part and denying in part the Petitioner's request for a zoning variance, subject to restrictions set forth therein; and

WHEREAS, as a result of a clerical error, the 4th line of the "Therefore" clause on page 3 of the subject Order erroneously contained the words "and building", and;

WHEREAS, the "It Is Further Ordered" clause on page 3 of the subject Order erroneously contained the words "window and" in the second line of said paragraph and erroneously recited "setback of 30 ft. in lieu of the required 35 ft." in the third line of said paragraph.

NOW, THEREFORE, by Order of the Zoning Commissioner of Baltimore County, the text of the original opinion and order shall be amended to read as follows:

THEREFORE, IT IS ORDERED this 10th day of January, 1991 that the Petition for Zoning Variance from Section 1B01.2.C.2.a (V.B.5.a., CMDP) of the B.C.Z.R. for a window to tract boundary setback of 10 ft. in lieu of 35 ft., is hereby DENIED; and,

IT IS FURTHER ORDERED that a zoning variance from Section 504 (V.B.5.b., CMDP) of the (B.C.Z.R.) to permit a building to tract boundary setback of 10 ft. in lieu of the required 30 ft., in accordance with the Petitioners' Exhibit No.1, is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein."

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Date 1-10-91  
By M. Haines

IT IS FURTHER ORDERED, that all other terms, conditions and restrictions of the original Order of December 27, 1990 shall remain in full force and effect except as amended herein.

J. Robert Haines  
J. Robert Haines  
Zoning Commissioner  
for Baltimore County

JRH:mmm  
cc: Peoples Counsel

ORDER RECEIVED FOR FILING  
Date 1-10-91  
By M. Haines

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning

111 West Chesapeake Avenue  
Towson, MD 21204

887-3353

December 27, 1990

Paul J. Redmond, Esquire  
405 Allegheny Avenue  
Towson, Maryland 21204

RE: Petition for Zoning Variance  
Case No. 91-159-A  
Donald H. McKinstry

Dear Mr. Redmond:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been granted in part and denied in part in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours  
J. Robert Haines  
J. Robert Haines  
Zoning Commissioner

JRH:mmm  
encl.  
cc: Peoples Counsel  
cc: Petitioner  
Protestants







Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353

J. Robert Haines  
Zoning Commissioner

November 27, 1990

Paul J. Redmond, Esquire  
405 Allegheny Avenue  
Towson, MD 21204

RE: Item No. 194, Case No. 91-159-A  
Petitioner: Donald H. McKinstry, et ux  
Petition for Zoning Variance

Dear Mr. Redmond:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

*James E. Dyer*  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. Donald H. McKinstry  
8202 Feather Hill Road, Apt. 202  
Perry Hall, MD 21128

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353

J. Robert Haines  
Zoning Commissioner

Your petition has been received and accepted for filing this  
5th day of November, 1990.

*J. Robert Haines*  
J. ROBERT HAINES  
ZONING COMMISSIONER

Received By:

*James E. Dyer*  
Chairman  
Zoning Plans Advisory Committee

Petitioner: Donald H. McKinstry, et ux

Petitioner's Attorney: Paul J. Redmond

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND RESOURCE MANAGEMENT

11/14/90  
Date

Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Zoning Item # 194, Zoning Advisory Committee Meeting of November 27, 1990

Property Owner: Donald H. McKinstry, et ux District: 11

Location: 4916 White Marsh Road Sewage Disposal: metro

Water Supply: private COMMENTS ARE AS FOLLOWS:

- ( ) Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review and approval.
- ( ) Prior to new installation(s) of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 887-3775, to obtain requirements for such installation(s) before work begins.
- ( ) A permit to construct from the Bureau of Quality Management is required for such items as spray paint processes, underground gasoline storage tank(s) (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
- ( ) A permit to construct from the Bureau of Air Quality Management is required for any charbroiler generation which has a total cooking surface area of five (5) square feet or more.
- ( ) Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- ( ) Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs and sewerage facilities or other appliances pertaining to health and safety, two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information, contact the Water Quality Monitoring Section, Bureau of Regional Community Services, 887-6500 x 315.
- ( ) Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
- ( ) If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.
- ( ) Prior to razing of existing structure(s), petitioner must contact the Division of Waste Management at 887-3745, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestos, 887-3775.
- ( ) Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Waste Management at 887-3745.
- ( ) Soil percolation tests, have been \_\_\_\_\_, must be \_\_\_\_\_ conducted.
  - ( ) The results are valid until \_\_\_\_\_
  - ( ) Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.
- ( ) Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- ( ) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
  - ( ) shall be valid until \_\_\_\_\_
  - ( ) is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Application.
- ( ) Prior to occupancy approval, the portability of the water supply must be verified by collection of bacteriological and chemical water samples.
- ( ) If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted. For more information contact the Division of Environmental Management at 887-3980.
- ( ) In order to subdivide this property, the owner or developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. If there are any questions regarding the subdivision process, please contact the Land Development Section at 887-2762.
- ( ) Others \_\_\_\_\_

received  
11/17/90

BUREAU OF WATER QUALITY AND RESOURCE  
MANAGEMENT

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

NOVEMBER 15, 1990

TO: J. ROBERT HAINES, ZONING COMMISSIONER, DEPARTMENT ZONING

FROM: CHARLES E. BURNHAM, PLANS REVIEW CHIEF, DEPARTMENT OF PERMITS & LICENSES

SUBJECT: ZONING ITEM #: 194  
PROPERTY OWNER: Donald H. McKinstry, et ux  
LOCATION: N/S White Marsh Road, 3400' of centerline  
Bucks School House Road (#4916 White Marsh Road)  
ELECTION DISTRICT: 11th  
COUNCILMANIC DISTRICT: 5th

A REVIEW OF THE SITE PLAN FOR THE ABOVE ZONING ITEM INDICATES THE FOLLOWING:

- ( ) PROPOSED SITE PLAN DOES, DOES NOT, COMPLY TO STATE CODE OF MARYLAND REGULATION 05.01.07, MARYLAND BUILDING CODE FOR THE HANDICAPPED.
- ( ) PARKING LOCATION ( ) RAMPS (degree slope)
- ( ) NUMBER PARKING SPACES ( ) CURB CUTS
- ( ) BUILDING ACCESS ( ) SIGNAGE
- ( ) PLAN SHALL COMPLY TO SET BACKS FOR EXTERIOR FIRE SEPARATION DISTANCE OF ARTICLE 5 AND ARTICLE 9 OF THE CURRENT BALTIMORE COUNTY BUILDING CODE.
- ( ) A BUILDING PERMIT IS REQUIRED BEFORE ANY CONSTRUCTION CAN BEGIN. SECTION 111.1 OF ARTICLE 1. CONSTRUCTION DRAWINGS MAY BE REQUIRED.
- ( ) A CHANGE OF OCCUPANCY PERMIT IS REQUIRED TO CHANGE THE EXISTING USE OF THE STRUCTURE TO THE PROPOSED USE. SECTION 103.2 ALTERATIONS MAY BE NECESSARY BY CODE TO COMPLY TO NEW USE REQUIREMENTS.
- ( ) STRUCTURE IS SUBJECT TO FLOOD PLAIN LIMITATIONS, SECTION 516.0 COUNCIL BILL #158-88 (BALTIMORE COUNTY BUILDING CODE).
- ( ) OTHER - Wall openings are controlled by Table 906.3 and Section 906.3 to 906.3 to 906.6. See Section 906.2 for wall ratings.

PERMITS MAY BE APPLIED FOR @ ROOM 100, 111 WEST CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204 - PHONE - 887-3900.

THIS REVIEW COVERS ONLY MAJOR ITEMS ASSOCIATED WITH THE SITE PLAN. A FULL REVIEW MAY BE CONDUCTED WHEN THE PERMIT APPLICATION AND PLANS ARE SUBMITTED.

APPLICABLE CODE: 1987 NATIONAL BUILDING CODES AS ADOPTED BY COUNCIL BILL #158-88.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

February 13, 1991

TO: Louis Waldner  
Executive Assistant

FROM: J. Robert Haines  
Zoning Commissioner

SUBJECT: Zoning Hearing Case No. 91-159-A  
DONALD H. MCKINSTRY, ET UX - Petitioner

The petitioners were referred to our office after inquiring about the above appeal hearing at the Executive's recent Face to Face meeting.

Per the petitioner's request, we forward to them a copy of our letter addressed to the Board of Appeals which advises the Board to notify all parties of the scheduled appeal hearing (a copy of said letter is attached for your information). I believe this letter serves as a satisfactory status report for this case.

If you have any questions concerning this matter, please do not hesitate to call our Appeals Clerk, Charlotte Radcliffe at 887-3391.

JRH/cer

Attachment

111 West Chesapeake Avenue  
Towson, MD 21204

887-3353

February 8, 1991

Baltimore County Board of Appeals  
County Office Building, Room 315  
Towson, Maryland 21204

RE: Petition for Zoning Variance  
N/S White Marsh Road, 3400' E C/L of Bucks School House Road  
(4916 White Marsh Road)  
11th Election District, 5th Councilmanic District  
DONALD H. MCKINSTRY, ET UX - Petitioner  
Case No. 91-159-A

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on January 21, 1991 by Deborah C. Dopkin, Attorney on behalf of the Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

*J. Robert Haines*  
J. ROBERT HAINES  
Zoning Commissioner

JRH:cer

cc: Mr. & Mrs. Donald H. McKinstry  
8202 Featherhill Road (Apt. A202), Perry Hall, MD 21128

Deborah C. Dopkin, Esquire - Hellman & Redmond  
405 Allegheny Avenue, Towson, MD 21204

Michael F. Delea, Jr., 400 Allegheny Avenue, Towson, MD 21204

Linda L. Rosier, 4910 White Marsh Road, Baltimore, MD 21237

Sharon Rusinovich, 4918 White Marsh Road, Baltimore, MD 21237

People's Counsel, Rm. 304, County Office Bldg., Towson, MD 21204

File

Baltimore County  
Fire Department  
700 East Joppa Road, Suite 901  
Towson, Maryland 21204-5500  
(301) 887-4500

Paul H. Reincke  
Chief

NOVEMBER 28, 1990

J. Robert Haines  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: DONALD H. MCKINSTRY

Location: #4916 WHITE MARSH ROAD

Item No.: 194 Zoning Agenda: NOVEMBER 27, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Carl Joseph Kelly* 11/28/90 Noted and Approved  
Planning Group Fire Prevention Bureau  
Special Inspection Division

JK/KEK

APPEAL

Petition for Zoning Variance  
N/S White Marsh Road, 3400' E C/L of Bucks School House Road  
(4916 White Marsh Road)  
11th Election District - 5th Councilmanic District  
DONALD H. MCKINSTRY, ET UX - Petitioner  
Case No. 91-159-A

Petition for Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1. Zoning Plat

2. Two (2) photographs of subject lot

Zoning Commissioner's Order dated December 27, 1990 (Denied in part; Granted in part with conditions)

Zoning Commissioner's Amended Order dated January 10, 1991 correcting clerical errors.

Notice of Appeal received January 21, 1991 from Deborah C. Dopkin, Attorney on behalf of the Petitioners

cc: Mr. & Mrs. Donald H. McKinstry  
8202 Featherhill Road (Apt. A202), Perry Hall, MD 21128

Deborah C. Dopkin, Esquire - Hellman & Redmond  
405 Allegheny Avenue, Towson, MD 21204

Michael F. Delea, Jr., 400 Allegheny Avenue, Towson, MD 21204

Linda L. Rosier, 4910 White Marsh Road, Baltimore, MD 21237

Sharon Rusinovich, 4918 White Marsh Road, Baltimore, MD 21237

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
J. Robert Haines, Zoning Commissioner  
Ann M. Nastarowicz, Deputy Zoning Commissioner  
James E. Dyer, Zoning Supervisor  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, County Attorney  
Public Services





